



A STUDY ON LEGAL AID IN INDIA

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ABSTRACT

Legal Aid refers to the provision of free legal assistance to the poor and needy who cannot afford to hire a lawyer to represent them in a lawsuit or legal procedure before a court, tribunal, or authority. Legal aid is critical to ensuring that everyone has equal access to justice. The perspective and role of the judiciary in relation to the right to legal aid have been examined in this study. The recognition of the right to free legal assistance as a fundamental right is the result of judicial interpretation of the most prized right under Article 21 of the Indian Constitution. The essay finishes with a discussion of India's constitutional entitlement to free legal aid and the guidelines set forth by the Legal Services Authority Act of 1987.

KEYWORDS: Law, Legal Aid, Constitution, Authority.

INTRODUCTION:

History of Legal aid in India:

Under the chairmanship of Hon. Mr. Justice P.N. Bhagwati, then a Judge of the Supreme Court of India, a national committee was formed in 1980 to oversee and regulate legal assistance programmes across the country. The Committee became known as CILAS (Committee for the Implementation of Legal Aid Schemes) and began monitoring legal aid activities across the country. The Legal Services Authorities Act of 1987 was created to provide a statutory foundation for legal aid programmes across the country. After the Amendment Act of 1994 made some changes to the Act, it was eventually put into effect on November 9th, 1995.

Provisions relating Legal aid in India:

Equal justice and free legal aid are guaranteed by Article 39A of the Indian Constitution. "The State shall ensure that the legal system operates in a manner that promotes justice on an equal footing, and shall, in particular, provide free legal aid, through appropriate legislation or schemes or in any other manner, to ensure that opportunities for obtaining justice are not denied to any citizen due to economic or other disabilities."

On the civil side, Order XXXIII. R.18 of the CPC1908 stated that the state and federal governments could create additional measures for providing free legal services to destitute people.

Legal Services Authorities Act, 1987:

The Legal Services Authorities Act of 1987 contains provisions relating to legal aid. In order to provide legal aid and support, the Act envisions a countrywide network. The National Legal Services Authority is the main agency charged with establishing policies and principles for making legal services available under the Act's provisions, as well as framing the most effective and cost-efficient legal services schemes. It also distributes funding and grants to state legal services authorities and non-governmental organisations (NGOs) to help them implement legal aid systems and programmes.

Constitution of the National Legal Services:

The Central Authority shall consist of

The President, in consultation with the Chief Justice of India, shall nominate a serving or retired Supreme Court Judge; and such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, to be nominated by that government in consultation with the Chief Justice of India, who shall be the Executive Chairman.

In consultation with the Chief Justice of India, the Central Government shall nominate a Member Secretary of the Central Authority, with such experience and qualifications as that Government may specify, to exercise such functions.

Constitution of State Legal Services Authority:

A State Authority shall consist

The Patron in Chief shall be the Chief Justice of the High Court; a serving or retired Judge of the High Court, to be nominated by the Governor in consultation with the Chief Justice of the High Court, who shall be the Executive Chairman; and such number of other Members as may be prescribed by the State Government, to be nominated by that Government.

The State Government, in agreement with the Chief Justice of the High Court,

shall nominate a Member Secretary of the State Authority who is not lower in rank than a District Judge from the State Higher Judicial Service to exercise such responsibilities.

Even though he is not entitled to be appointed as Member Secretary under this subsection, a person serving as Secretary of a State Legal Aid & Advice Board immediately before the date of the State Authority's creation may be appointed as such for a period not exceeding five years.

The State Authority's administrative expenses, including salaries, allowances, and pensions paid to the Member Secretary, officers, and other State Authority workers, would be paid out of the State's Consolidated Fund.

FREE LEGAL AID IN INDIA : THE POSITIVE CONTRIBUTION OF JUDICIARY:

In the judgement of Hussainara Khatoon⁴, the Supreme Court of India had a major opportunity to make an emphatic pronouncement regarding the rights of the poor and indigent, where the petitioner brought to the Supreme Court's attention that most of the under trials have already received far more punishment than they would have received had they been convicted without delay. The delay was created by the people involved's inability to hire a lawyer to defend them in court, and the main reason for their incapacity was their poverty. In this instance, the court underlined that Article 39-A emphasised that free legal services were an inalienable part of a "reasonable, fair, and just" system, and that the right to free legal services was inherent in Article 21's promise.

Two years later, in *Khatri v. State of Bihar*, the court addressed the right to free legal assistance for destitute or needy defendants who are unable to afford counsel. It was held that the state is required by the Constitution to provide such assistance not only during the course of the trial, but also when the accused is first brought before the magistrate or remanded from time to time, and that such a right cannot be denied on the basis of financial constraints, administrative inability, or the fact that the accused did not request it. The accused must be informed of their rights by Magistrates and Sessions Judges. The right to free legal services is an essential component of a reasonable, fair, and just procedure for a person accused of an offence, and it must be regarded as implicit in Article 21's guarantee, with the State having a constitutional obligation to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so demand. The State cannot escape this commitment by claiming financial or administrative difficulties, or by claiming that none of the aggrieved prisoners requested legal assistance.

In *Suk Das v. Union Territory of Arunachal Pradesh*, Justice P.N. Bhagwati emphasised the importance of raising legal awareness among the poor because they are unaware of their rights, particularly the right to free legal aid. He also noted that the majority of people living in rural areas in India are illiterate and unaware of their legal rights. Even literate people are unaware of their legal rights and responsibilities. They are not seeking a lawyer for consultation and advice because of their lack of legal awareness. Furthermore, because of their illiteracy and ignorance, they are unable to become self-sufficient and cannot even help themselves. As a result, promoting legal literacy has long been seen as one of the most important components of the legal aid movement's overall mission. Even the right to education, I believe, will fall short of its true goal if people are not educated about their legal rights, and our constitutional promise of bringing justice to people's doorsteps will remain a mirage.

Justice Krishna Iyer, a crusader for social justice in India, correctly stated that "if a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal, including special leave to the Supreme Court for want of legal assistance, there is implicit in the Court under Article 142 read with Articles 21 and 39-A of the Constitution, the power to grant special leave to the Supreme Court."

Each great branch of government has a statutorily acknowledged public duty to follow the rule of law and protect the constitution by enacting rules to carry out legislation intended to benefit the poor.⁸ Despite the fact that the law was designed to protect the poor, governments have been slow to put it into effect. "The impoverished shall not be priced out of the justice market by insistence on court-fee and reluctance to utilise the exemptive provisions of order XXXIII, CPC," the Supreme Court stated in *State of Haryana v. Darshana Devi*⁹. The state of Haryana has sought leave to appeal against the high court's order that correctly extended the 'pauper' provisions to auto-accident claims, despite the mandate of equal justice to the indigent under the magna carta of republic, as expressed in article 14 and emphasised in article 39A of the constitution. Order XXXIII applies to tribunals that have the appearance of a civil court. Even though several years have passed since the passage, the court expressed its regret that no state has yet developed rules to give effect to the beneficent supply of legal aid to the needy in order xxxii, rule 9A, civil procedure law. Parliament is stifled, and the public is dissatisfied. Even after a law for the poor's benefit has been enacted, the state does not put it into effect by purposeful default.

SUPREME COURT ON LEGAL AID:

The link between Article 21 and the right to free legal assistance was established in the case *Hussainara Khatoon v. State of Bihar*, in which the court was outraged by the plight of thousands of people facing criminal charges who had languished in Bihar jails for years without ever being represented by a lawyer. "There is no doubt that timely trial, and by speedy trial, we mean fairly expedient trial, is an inherent and vital aspect of the fundamental right to life and liberty entrenched in Article 21," the court stated. The court stressed that free legal services were an integral part of a "reasonable, fair, and just" system, and that the right to free legal services was implicit in Article 21's promise.

"The State is Constitutionally bound to provide such aid not only at the stage of trial but also when they are first produced before the magistrate or remanded from time to time, and that such a right cannot be denied on the ground of financial constraints or administrative inability or that the accused did not ask for it," the court held in *Khatri & Ors v. State of Bihar & Others*.

"It may now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence that may involve jeopardy to his life or personal liberty, and this fundamental right is implicit in the requirement of reasonable, fair, and just procedure prescribed by Article 2," the court wrote in *Sukh Das v. Union Territory of Arunachal Pradesh*⁴.

The Supreme Court stated in *Indira Gandhi v. Raj Narain*⁵ that "the rule of law is the fundamental framework of the Indian Constitution." No one has ever condemned unheard Equality of Justice so harshly. Only when a fundamental right, prerogative, or privilege has been violated should a remedy be sought in a court of law. The trial is also tainted at the stage when he is first brought before the magistrate in the absence of legal representation."

The Court stated in *State of Haryana v. Darshana Devi*⁶ that insistence on courtfee and reluctance to utilise the exemptive provisions of order XXXIII, CPC shall not price the poor out of the justice market.

Manubhai Pragaji Vashi v. State of Maharashtra The right to free legal assistance was expanded by the court. Art 21 guarantees the right to free legal assistance, while Art 39A guarantees "equal justice" and "free legal aid."

CONCLUSION:

Legal assistance focuses on distributive justice, effective welfare benefit implementation, and the elimination of social and institutional discrimination against the poor. It operates under the Legal Services Authority Act of 1987, which serves as a framework for the administration of free justice. It is a magnificent right enshrined in Article 39A of our Constitution to promote justice on an equal footing. The right to legal aid is a fundamental right under Article 21 of the Indian Constitution, according to the court in *Khatri v. State of Bihar*.

REFERENCES:

1. AIR 1972 SC 855.
2. AIR 1986 SC 991.
3. Articles 14 and 22(1) of the Indian Constitution.
4. *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 98.
5. *Khatri v. State of Bihar*, AIR 1981 SC 262.
6. *M.H. Hoskot v. State of Maharashtra* (1978) 3 SCC 81.
7. Order 33, Rule 9A, Code Civil Procedure, 1908.
8. Section 2(1) (a) of the Legal Service Authority Act, 1987.
9. Section 2(1) © of the Legal Service Authority Act, 1987.